

MEMORANDUM OF LAW

DATE: January 15, 1992
TO: Staajabu Heshimu, Equal Opportunity Contracting Program
Manager
FROM: City Attorney
SUBJECT: American With Disabilities Act

You have requested an opinion concerning whether the City must pass the requirements of the Americans with Disabilities Act "ADA" relating to accessibility and non-discrimination on to our contractors through contractual agreement. You have also asked if the City must monitor independent contractors for compliance with the ADA. Finally, you have requested sample language for inclusion in contracts.

The ADA becomes effective in 1992. Title I, dealing with employment becomes effective July 26, 1992. Title II, public services and Title III, public accommodation become effective January 26, 1992. Finally, Title IV, telecommunications, becomes effective July 26, 1993. The scope of the Act is extremely broad and responsibility for compliance may not be passed to a separate entity through contractual agreement. This rule is not specifically enunciated in the ADA itself. Nevertheless, the regulations promulgated to give guidance in implementing the ADA make the City's responsibility clear. Specifically, the regulations at section 35.130(b) state:

56 C.F.R. Section 35.130 General prohibitions against discrimination.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual licensing, or other arrangements, on the basis of disability--

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

. . . .
. . . .
. . . .

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

....
(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

....
(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

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....
(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability. (Emphasis added).

56 C.F.R Section 35.102 (1991) goes on to say:

All governmental activities of public entities are covered, even if they are carried out by contractors. For example, a State is obligated by title II to ensure that the services, programs, and activities of a State park inn operated under contract by a private entity are in compliance with title II's requirements.

The example makes clear the State is obligated to ensure compliance. The regulations do not, however, state what methods should be employed by public entities to ensure compliance.

The City's commitment to the ADA was memorialized in City Manager's Report No. 91-470 and adopted by Resolution No. R-279130. Therefore, we suggest that future contracts include language which will put contractors on notice that the City is committed to the goals of the ADA and expects compliance with the ADA by its contractors. Enclosed is a sample of the contract language used by the City with regard to the Drug Free Workplace Act. Similar language may be drafted for the ADA. I will be available to review the proposed language once it is drafted.

If you have any further questions or need additional clarification, please feel free to contact me.

JOHN W. WITT, City Attorney
By

Sharon A. Marshall
Deputy City Attorney

SAM:vlj:341.1(x043.2)

Enclosure

cc Ralph Shackelford, Purchasing Agent

ML-92-4